IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Crl.MC.No. 2125 of 2007()

CC.642/2002 of CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM
ORDER DATED 11.1.2005 BY THIS COURT IN CRRP.NO.3391/2004

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PETITIONER: ACCUSED

KURIAN ABRAHAM, AGED 59 YEARS,
RESIDING AT THARAIKAT HOUSE,
CHENGALAM SOUTH.P.O, KOTTAYAM - 686 022.

BY ADV. SRI.A.G.ADITYA SHENOY

RESPONDENTS:

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1. K.C.KURUVILA, AGED 56 YEARS,
RESIDING AT KANDEKKERIL HOUSE,
MUTTAMBALAM.P.O, KOTTAYAM.

2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, COCHIN-682 031.

BY ADV. SRI.ARUN VISWANATH FOR R1
PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2125 of 2007

Dated this the 2nd day of July, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I Act. The verdict of guilty, conviction and sentence have now become final with the disposal of the criminal revision petition by another Bench of this Court as per order dated 11.01.2005. The petitioner faces a sentence of imprisonment for a period of one month. There is also a direction to pay an amount of Rs.1,03,375/- as compensation. In default of payment of the compensation amount, there is a direction to undergo S.I for a further period of one month.

2. The petitioner has now been committed to prison to undergo the substantive sentence of imprisonment for one month.

3. At this stage, the petitioner and the complainant have come together before this Court with a petition under Section 147 of the N.I Act. In that petition, it is reported to the Court that the parties have settled their disputes and the complainant has compounded the offence allegedly committed by the petitioner herein. The application for composition is duly signed by the rival contestants and counter signed by their respective counsel. The learned counsel for the 1st respondent/complainant Advocate Arun Viswanathan

confirms to this Court that the matter has been settled between the parties. He vouches for the signature of the complainant in the application for composition.

4. Both the counsel submit that the matter has been settled. I am satisfied from the submissions made at the Bar, from the averments in this Crl.M.C and the joint statement filed by the rival contestants duly counter signed by their counsel as also the submissions made by the learned counsel for the 1st respondent that the parties have willingly and voluntarily settled their disputes and the complainant has compounded the offence under Section 138 of the N.I Act committed by the petitioner. The liability to pay the entire amount of compensation due has also been discharged, it is submitted.

5. The revision petition having already been disposed of, the learned counsel for the accused/petitioner and the 1st respondent/complainant place reliance on the dictum in **Sabu George v. Home Secretary** [2007(1) KLT 982] to contend that the composition may be accepted and the unjust consequence of the accused being compelled to undergo incarceration in prison for a period of one month in execution of the sentence even after composition of the offence may be avoided. The counsel inform the Court that the entire composition amount has been paid and discharged. The counsel further submit that the accused has been

undergoing imprisonment in execution of the substantive sentence of imprisonment for the past 4 days.

6. I am satisfied that notwithstanding the disposal of the criminal revision petition, this is an eminently fit case where the powers under Section 482 Cr.P.C can and ought to be invoked as permitted in **Sabu George v. Home Secretary** to avoid the unjust consequence of the petitioner being forced to undergo substantive sentence of imprisonment for the offence under Section 138 of the N.I Act.

7. This Crl.M.C is, in these circumstances, allowed. The verdict of guilty, conviction and sentence of the petitioner in the prosecution under Section 138 of the N.I Act which has become final with the order dated 11.1.2005 in Crl.R.P.No.3391 of 2004 is hereby set aside. The petitioner, if he is in prison, shall be released from custody forthwith.

8. Hand over a copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

rtr/-